

BEFORE THE ARIZONA CORPORATION



JIM IRVIN
COMMISSIONER - CHAIRMAN
RENZ D. JENNINGS
COMMISSIONER
CARL J. KUNASEK
COMMISSIONER

IN THE MATTER OF THE APPLICATION OF)
EFFICY GROUP, INC. FOR A CERTIFICATE OF)
CONVENIENCE AND NECESSITY TO PROVIDE)
COMPETITIVE INTERLATA/INTRALATA)
RESOLD TELECOMMUNICATIONS SERVICES)
EXCEPT LOCAL EXCHANGE SERVICES.)

DOCKET NO. T-03484A-97-0744

DECISION NO. 61167

ORDER

Arizona Corporation Commission

DOCKETED

OCT 08 1998

Open Meeting
October 6 and 7, 1998
Phoenix, Arizona

DOCKETED BY

BY THE COMMISSION:

Having considered the entire record herein and being fully advised in the premises, the Arizona Corporation Commission ("Commission") finds, concludes, and orders that:

FINDINGS OF FACT

1. On December 23, 1997, Efficy Group, Inc. ("Efficy" or "Applicant") filed with the Commission an application for a Certificate of Convenience and Necessity ("Certificate") to provide resold telecommunications service in the State of Arizona.

2. In Decision No. 58926 (December 22, 1994), the Commission found that resold telecommunications providers ("resellers") were public service corporations subject to the jurisdiction of the Commission.

3. In Decision No. 59124 (June 23, 1995), the Commission adopted A.A.C. R14-2-1101 through R14-2-1115 to regulate resellers.

4. Efficy is a South Carolina corporation which has been qualified to conduct business in Arizona since 1997.

5. Efficy is a switchless reseller which purchases telecommunications services from WorldCom.

6. On May 15, 1998, the Commission's Utilities Division Staff ("Staff") filed a Staff Report.

7. The Staff Report stated that Efficy is a start-up company. Efficy provided unaudited

1 financial statements for the five months ended December 31, 1997, which indicated that it had a net loss
2 of \$468,000 on revenues of \$1.0 million. Staff stated that since these financial statements indicate that
3 Applicant did not generate enough revenue to cover its expenses, Staff has concerns about Applicant's
4 ability to incur operating losses in the future and to repay customer prepayments, advances, and deposits.
5 Accordingly, Staff recommended that pursuant to A.A.C. R14-2-1105.D, Applicant maintain for a
6 minimum of one year, an escrow account equal to the total amount of any prepayments, advances and
7 deposits that Applicant may collect from its customers as a condition of certification. In the alternative,
8 Applicant could file a letter stating that it does not currently charge customers any prepayments, advances
9 or deposits, and does not intend to do so in the future. If at some future date Applicant desired to charge
10 customers any prepayments, advances or deposits, it must file information with Staff that demonstrates
11 Applicant's financial viability. Staff would review the information and provide Applicant its decision
12 concerning financial viability within 30 days of receipt of the information. Staff believes that if
13 Applicant experiences financial difficulty, there should be minimal impact to its customers. Customers
14 are able to dial another reseller or facilities-based provider, and may permanently switch to another
15 company without forfeiting any prepayment, advance or deposit.

16 8. The Staff Report stated that Applicant has no market power and the reasonableness of its
17 rates would be evaluated in a market with numerous competitors.

18 9. Staff recommended that:

19 (a) Applicant's application for a Certificate should be approved subject to A.A.C.
20 R14-2-1106.B;

21 (b) Applicant's intrastate toll service offerings should be classified as competitive
pursuant to A.A.C. R14-2-1108;

22 (c) Applicant's competitive services should be priced at the effective rates set forth
23 in Applicant's tariffs and the maximum rates for these services should be the maximum
24 rates proposed by Applicant in its tariffs. The minimum rates for Applicant's competitive
25 services should be Applicant's long run incremental costs of providing those services as
set forth in A.A.C. R14-2-1109. Any future changes to the maximum rates in Applicant's
tariffs must comply with A.A.C. R14-2-1110;

26 (d) Applicant should be required to comply with the Commission's rules and modify
27 its tariffs to conform with these rules, if it is determined that there is a conflict between
Applicant's tariffs and the Commission's rules; and

28 (e) The application may be approved without a hearing.

1 10. By Procedural Order dated June 1, 1998, the Commission set a deadline of June 29, 1998
2 for filing exceptions to the Staff Report; requesting that a hearing be set; or requesting intervention as
3 interested parties.

4 11. No exceptions were filed to the Staff Report, nor did any party request that a hearing be
5 set, nor were any requests for intervention filed with Docket Control.

6 12. On July 29, 1998, Applicant filed a letter which indicated that Applicant has not and does
7 not intend to charge customers any prepayments, advances or deposits.

8 **CONCLUSIONS OF LAW**

9 1. Applicant is a public service corporation within the meaning of Article XV of the Arizona
10 Constitution and A.R.S. §§ 40-281 and 40-282.

11 2. The Commission has jurisdiction over Applicant and the subject matter of the application.

12 3. Notice of the application was given in accordance with the law.

13 4. As conditioned below, the provision of competitive interLATA/intraLATA reseller
14 services in Arizona by Applicant is in the public interest.

15 5. With the conditions contained herein, Applicant is a fit and proper entity to receive a
16 Certificate for providing competitive interLATA/intraLATA reseller services in Arizona.

17 6. Staff's recommendations in Findings of Fact No. 9 are reasonable and should be adopted.

18 **ORDER**

19 IT IS THEREFORE ORDERED that the application of Efficy Group, Inc. for a Certificate of
20 Convenience and Necessity for authority to provide competitive interLATA/intraLATA resold
21 telecommunications services except local exchange services shall be, and the same is, hereby granted,
22 as limited below.

23 IT IS FURTHER ORDERED that Efficy Group, Inc. shall comply with the Staff
24 recommendations set forth in Findings of Fact No. 9.

1 IT IS FURTHER ORDERED that Efficy Group, Inc. shall not be authorized to charge customers
2 any prepayments, advances or deposits. If in the future Efficy Group, Inc. desires to initiate such charges,
3 it must file information with the Commission that demonstrates the company's financial viability. Staff
4 shall review the information and file its recommendation concerning financial viability within thirty days
5 of receipt of the financial information, for Commission approval.

6 IT IS FURTHER ORDERED that this Decision shall become effective immediately.

7 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

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10 COMMISSIONER - CHAIRMAN

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COMMISSIONER

COMMISSIONER

IN WITNESS WHEREOF, I, JACK ROSE, Executive Secretary of the Arizona
Corporation Commission, have hereunto set my hand and caused the official seal
of the Commission to be affixed at the Capitol, in the City of Phoenix, this
8th day of Oct, 1998.

JACK ROSE
EXECUTIVE SECRETARY

DISSENT
BMB:dap

1 SERVICE LIST FOR:

EFFICY GROUP, INC.

2 DOCKET NO.:

T-03484A-97-0744

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Marieann Z. Machida

4 KELLEY DRYE & WARREN LLP

1200 19th Street, N.W., Suite 500

5 Washington, DC 20036

Attorneys for Efficy Group, Inc.

6

Paul Bullis, Chief Counsel

7 Legal Division

ARIZONA CORPORATION COMMISSION

8 1200 West Washington Street

Phoenix, Arizona 85007

9

Director Utilities Division

10 ARIZONA CORPORATION COMMISSION

1200 West Washington Street

11 Phoenix, Arizona 85007

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